

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 14272 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

=====

=

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

=

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)**Versus****BIJALBHAI M. DESAI - Respondent(s)**

=====

=

Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

MR YV VAGHELA for Respondent No(s).: 1.

=====

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 17/08/2005****ORAL JUDGMENT**

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality

and validity of the judgment and award passed by the Labour Court, Himmatnagar, dated 23.12.2004 passed in Reference (LCH) No.70/2003 in partly allowing the same and quashing and setting aside the order of dismissal and directing the petitioner to reinstate the respondent workman without any backwages however, with continuity of service.

2.The respondent workman was serving as a Driver and it was found that while he was on duty on 23.11.2001 on Jodhpur - Ahmedabad route he had consumed intoxicating liquor and he was not in a position to drive the bus properly and the passengers of the bus compelled him to stop the bus however, he did not stop the bus therefore, the passengers became angry and at last he stopped the bus near Palli and left the bus and the passengers on the road, and even one passenger had taken the bus to Sirohi depot and therefore, Departmental Inquiry was initiated against him and after holding the charge of taking liquor on duty and driving the bus, proved against him, the Disciplinary Authority held that the conduct on the part of the respondent workman was endanger to the safety of the passengers of the bus and passed an order dismissing the respondent workman from service. The respondent

workman raised industrial dispute challenging his dismissal which was referred to Labour Court, Himmatnagar, for its adjudication being Reference (LCH) No.70/2003 and the Labour Court, Himmatnagar, also held that the charge of taking liquor on duty has been proved however, considering the fact that there are no past default against the respondent workman and it was his first misconduct exercised powers under Section 11(A) of the I.D.Act and interfered with the order of punishment and substituted the same from dismissal to withholding of 2 increments with permanent future effect and directed the petitioner to reinstate him without backwages. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Himmatnagar dated 23.12.2004 passed in Reference (LCH) No.70/2003, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Ashish Dagli, learned advocate, appearing on behalf of the petitioner has vehemently submitted that the Labour Court has materially erred in exercising powers under Section 11(A) of the I.D.Act, more particularly, when it was found that the respondent workman was driving the bus in intoxicating condition

and has taken liquor on duty and he was not in a position to drive the bus properly. It is also further submitted by him that the charge of having drunk while on duty as a driver of a public transport bus is a grave misconduct and the respondent workman cannot be reinstated on that Post as it is not in the interest of public at large to allow the respondent workmen to drive the S.T.Bus. He has also further submitted that in fact the Labour Court has exercised powers under Section 11(A) of the I.D.Act on the ground that it is his first misconduct and there are no past misconducts. However, in fact, there are 14 defaults in the credit of respondent workman and he has produced the default card to prove that there were 14 defaults against him. It is further submitted that in fact the same was not produced before the Labour Court as the petitioner corporation was under the bonafide impression that in such a grave misconduct the Labour Court would not interfere with the order of punishment imposed by the Disciplinary Authority and would not exercise powers under Section 11(A) of the I.D.Act therefore, it is requested to allow the present Special Civil Application.

4. On the other hand, Shri Y.V.Vaghela, learned advocate,

appearing on behalf of the respondent has supported the judgment and award passed by the Labour Court and has relied upon the judgment of the Hon'ble Supreme Court in case of **Jasvantsinh V/s. Pepso Road-ways Transport Corporation & Ors.** Reported in **A.I.R. 1984 S.C. p.355** as well as the judgment of the learned Singal Judge of this Court in case of **G.S.R.T.C. V/s. Baldev & Ors.** Reported in **1998(2) GLH p.541** and submitted that the Labour Court has rightly exercised powers under Section 11(A) of the I.D.Act and therefore, it is requested to dismiss the present Special Civil Application.

5.Heard the learned advocates appearing on behalf of the parties.

6.It is not in dispute that the conduct on the part of the respondent workman was very serious and grave and it was found that he had taken liquor on duty and while driving the bus he was in intoxicating condition and he was not in a position to drive the vehicle properly. Inspite of the fact that passengers cried and shouted and become angry and requested the respondent workman to stop the bus, he did not stop the bus and at last with great difficulty he stopped the bus on road and ran away and one of the passenger was required to take

the bus of passengers to Sirohi depot. The Labour Court has exercised jurisdiction under Section 11(A) of the I.D.Act by holding that there are no past defaults and it is his first misconduct. However, considering the default card, which is produced by the learned advocate, appearing on behalf of the petitioner there are 14 defaults in the credit of the respondent workman and therefore, the Labour Court was not justified in exercising powers under Section 11(A) of the I.D.Act on that ground. At the same time, it is true that the said default card was not before the Labour Court however, in the facts and circumstances of the present case, non-production of the default card before the Labour Court, the respondent workman should not get benefit and under the circumstances, this Court proposes to remand the matter to the Labour Court to consider the Reference afresh and consider whether even considering the default card and the serious misconduct, still the powers under Section 11(A) of the I.D. Act are required to be exercised or not. Under the circumstances, without going into the facts whether the judgment cited at the bar on behalf of the respondent workman are required to be considered or not? But merely on the aforesaid ground as discussed above, the matter is remanded to the Labour Court.

7. For the reasons stated above, the petition succeeds partly and the judgment and award passed by the Labour Court dated 23.12.2003 passed in Reference (LCH) No. 70/2003 is hereby quashed and set aside and the matter is remanded to the Labour Court, Himmatnagar for deciding the same in accordance with law and on merits. It will be open for the petitioner corporation to produce the default card, which is directed to be considered by the Labour Court.

8. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.